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**Commission on Ethics &
Public Trust
Miami-Dade County**

Memorandum

To: Xavier L. Suarez, District 7 County Commision Candidate 2004

The Honorable Carlos Alvarez, Mayor
The Honorable Chairperson, Joe Martinez
Members, Board of County Commissioners

From: Robert Meyers, Executive Director, Commission on Ethics and Public Trust

Date: November 2, 2005

Re: Final Audit Report – Xavier L. Suarez Campaign Account 2004

Attached is your copy of the above-referenced audit report.

Overall, the COE found the campaign to be in substantial compliance with the requirements of Miami-Dade County Code §12-22 (G), “Use of Funds,” as no disallowed expenses were paid with public funds. However, the candidate did not comply with Miami-Dade County Code §12-22 (f) (6), “Disposal of Surplus Funds,” as approximately \$1,000 of the campaign account’s surplus funds should have been paid back to the County’s Election Campaign Financing Trust Fund.

Additionally, the COE found several of instances of noncompliance with Florida Statute Title IX, Chapter 106, “Campaign Financing.” The more significant areas of concern include maintaining two (2) campaign bank accounts simultaneously; failure to close one of the bank accounts 90 days after the date of the election; use of the campaign debit card for cash withdrawals; expenditures in furtherance of the campaign through third parties; payments made to media consultants for the purchase of media; and insufficient supporting documentation for approximately 12% of the campaign expenditures.

cc: Kerry Rosenthal, Chairman, Commission on Ethics and Public Trust
Lester Sola, Supervisor of Elections

**COMMISSION ON ETHICS & PUBLIC TRUST
POST-ELECTION AUDIT OF THE CAMPAIGN ACCOUNT OF**

**XAVIER SUAREZ
DISTRICT 7 COMMISSION CANDIDATE 2004**

SUMMARY OF AUDIT FINDINGS

Item No.	Audit Findings	FL Statute / County Code Violation	Comments
1	The COE auditor found insufficient supporting documentation (i.e., no vendor receipts or invoices) for campaign expenses totaling approximately \$30,933 (12% of total campaign expenses). (p. 5.)	Florida Statute §106.11(1)(b)(1)-(6) and Miami-Dade County Code §12-22, Subsection (f)(3)(a)(1) require the campaign to maintain adequate supporting documentation for all campaign expenditures.	The COE auditor found that there was a total of \$30,933.35 (12% of total campaign expenses) in campaign expenditures that lacked any supporting documentation in the form of an invoice or receipt from the vendor that provided the goods and/or services.
2	The Xavier L. Suarez campaign maintained and operated two (2) separate campaign bank accounts (Bank of America and City National Bank) from September 13, 2004 through November 16, 2004. (pp. 5 – 6.)	Florida Statute §106.021 (b) , requires that a candidate designate one primary campaign depository for the purpose of depositing all contributions and disbursing all expenditures. The statute also states that a candidate may also designate one secondary depository in each county in which an election is held for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository.	Bank of America was the campaign's primary depository. This account was opened on April 8, 2004, and subsequently closed on November 16, 2004. Based on a review of the account's bank statements, the candidate used the account for both deposits and expenditures during the timeframe it was open. On September 13, 2004, the campaign opened a secondary bank account at City National Bank. This account was subsequently closed on February 23, 2005. Based on a review of the account's bank statements, the candidate used the account for both deposits and expenditures during the timeframe it was open.
3	City National Bank account not closed within 90 days of the November 2, 2004 run-off election. (p. 6.)	County Code §12-22 (f)(6) and Florida Statute §106.141 (4) require that the candidate dispose of any surplus funds remaining in the campaign account within 90 days after the election date.	The COE received a letter from City National Bank dated February 28, 2005 stating that the Xavier L. Suarez Campaign Account was closed on February 23, 2005, which is <u><i>more than three weeks after the 90-day deadline which ended on January 31, 2005.</i></u>

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4	Candidate made 16 cash withdrawals totaling \$1,332 using the campaign account debit card. (p. 7.)	<p>Florida Statute 106.11 (2)(a)(6) <u>prohibits</u> debit cards to be used by the campaign <u>for cash withdrawals</u> and states the following:</p> <p>“A debit card is ALLOWED as long as the person using the debit card does not receive cash as part of, or independent of, any transaction for goods or services.”</p>	The Xavier Suarez campaign made sixteen (16) cash withdrawals using the campaign debit card that totaled \$1,332. This debit card was issued to the Xavier Suarez campaign from Bank of America, where the candidate maintained a campaign depository.
5	Candidate made two (2) other cash withdrawals, totaling \$2,151.92, without any supporting documentation to justify the legitimacy of the transaction. (p. 8.)	<p>Florida Statute §106.11(1)(b)(1)-(6) and Miami-Dade County Code §12-22, Subsection (f)(3)(a)(1) require the campaign to maintain adequate supporting documentation for all campaign expenditures.</p>	<p>The candidate made two (2) teller withdrawals totaling \$2,151.92, for which there was no supporting documentation in the form of receipts to verify the purpose of the cash withdrawn.</p> <p>One withdrawal was made on October 15, 2004, for \$150.00. The other withdrawal was made on November 16, 2004, for \$2,001.92.</p>
6	Candidate made Expenditures in Furtherance of the Campaign Through Third Parties, totaling \$5,700. (pp. 8 – 9.)	<p>Florida Statutes §106.021(3) and §106.11(1) prohibit direct or indirect campaign expenditures in furtherance of a candidate’s election campaign except through the duly appointed campaign treasurer.</p>	<p>The following individuals received campaign funds from the Xavier L. Suarez campaign for the purpose of paying poll worker salaries, campaign mobilization efforts, and the “Get-Out-The-Vote (GOTV)” initiative:</p> <p>Darlene Jackson was issued two (2) checks from the Xavier L. Suarez campaign totaling \$2,000 for poll worker salaries and the campaign’s mobilization efforts.</p> <p>Vicente Lago was issued two (2) checks from the Xavier L. Suarez campaign totaling \$1,500 for the campaign’s mobilization efforts and the GOTV initiative.</p>

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SUMMARY OF AUDIT FINDINGS

<p style="text-align: center;">6</p>	<p>(CONTINUED)</p> <p>Candidate made Expenditures in Furtherance of the Campaign Through Third Parties, totaling \$5,700. (pp. 8 – 9.)</p>	<p>Florida Statutes §106.021(3) and §106.11(1) prohibit direct or indirect campaign expenditures in furtherance of a candidate's election campaign except through the duly appointed campaign treasurer.</p>	<p><i>Leon Leonard</i> was issued two (2) checks from the Xavier L. Suarez campaign totaling \$1,200 for the campaign's mobilization efforts and poll worker salaries.</p> <p><i>David Walker</i> was issued one (1) check from the Xavier L. Suarez campaign totaling \$1,000 for the campaign's mobilization efforts.</p> <p>Because there were no receipts or invoices submitted by the payees, the COE could not definitively verify the validity of these campaign payments.</p>
<p style="text-align: center;">7</p>	<p>\$76,963 in payments to media consultants for purchase of media. (pp. 9 – 10.)</p>	<p>Florida Elections Commission decisions DE 03-08 and DE 86-14, which interprets Florida Statute §106.11(1), states the following:</p> <p>“A candidate who is procuring both media related consultant services and mass media political advertisements <i>must issue separate checks drawn on the campaign account to media consultant for their services and to each media outlet that is providing advertising services.</i>”</p>	<p>The Xavier L. Suarez campaign issued eight (8) checks totaling \$76,963.00 to media consultants for the purchase of radio advertising and media consulting fees. Five (5) checks totaling \$52,488.00 were paid to “The A Group,” and three (3) checks totaling \$24,475.00 were paid to “E & N Group.”</p>

INTRODUCTION

In March of 2001, the Miami-Dade County Board of County Commissioners adopted Ordinance No. 01-39 (the Ordinance) for campaign financing reform and is codified in Miami-Dade County Code §12-22. The Ordinance is intended to make the political process more accessible to candidates who run for the Office of County Mayor or County Commissioner by providing eligible candidates with public financing from the Election Campaign Financing Trust Fund (the Fund).

The Ordinance establishes the eligibility requirements that a candidate must meet in order to receive public financing from the Fund. For the Office of County Commissioner, each candidate who satisfies these requirements may be eligible for a maximum contribution of \$75,000 in the primary election, and an additional \$50,000 if a run-off election occurs. For the Office of Mayor, each candidate who satisfies the eligibility requirements may receive \$300,000 for the primary election and an additional \$200,000 if the candidate is in a run-off election.

Additionally, the Ordinance requires the Commission on Ethics (COE) to conduct post-election audits ninety (90) days following the date of the election for those candidates who received public financing from the County's election trust fund. This is in keeping with the requirements of both Miami-Dade County Code §12-22 (f)(6) and Florida Statute §106.141 (4), which require that the candidate dispose of any surplus funds remaining in the campaign account within 90-days of the election date by: (1) returning all surplus funds to the Election Campaign Financing Trust Fund; and, (2) any funds remaining in the campaign account that are in excess of the public funding received should be disposed of per Florida Statute §106.141, Disposition of Surplus Funds.

Accordingly, the COE conducted a post-election audit of the campaign account of Mr. Xavier L. Suarez, District 7 County Commission candidate, who received a total of \$125,000 in public funding: (1) \$75,000 for the primary election held on August 31, 2004; and, (2) an additional \$50,000 for the run-off election held on November 2, 2004.

PURPOSE & SCOPE OF THE AUDIT

The post-election audit conducted by the COE focuses primarily on campaign expenditures as other Miami-Dade County agencies have been involved in current, on-going examinations of all campaign contributions for those candidates who received public monies. Therefore, the COE focused on the following audit objectives:

1. Verify that the candidate complied with County Code §12-22 (e)(1), which sets forth the expenditure limits for those candidates who receive public financing.
2. Verify that the candidate complied with County Code §12-22 (g), "Use of Funds," which states the following six (6) types of expenditures that public funds **cannot** be used for:

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- a. Clothing for a candidate or an immediate family member of the candidate, except for a political advertisement as defined in Florida Statute §106.001 (17). An immediate family member is defined as the spouse, parents, children, and siblings of the candidate.
 - b. The purchase or rental of any vehicle for a candidate.
 - c. The enhancement of any vehicle owned by a candidate or an immediate family member of the candidate.
 - d. Personal grooming or cosmetic enhancements for a candidate.
 - e. Payment to a candidate or an immediate family member for the purchase of any goods or services.
 - f. Payment to any corporation, firm, partnership, or business entity owned or controlled by a candidate or an immediate family member for the purchase of any goods or services. "Controlled by" shall mean ownership, directly or indirectly, of 5% or more of the outstanding capital stock in any corporation, or direct or indirect interest of 5% or more in a firm, partnership, or other business entity.
3. Verify that the candidate disposed of any surplus funds remaining in the campaign account within 90-days following the election as required by County Code §12-22 (F) (6) and Florida Statute §106.141 (4).
 4. Review for compliance with applicable sections of Florida Statute Title IX, Chapter 106, "Campaign Financing."

The COE obtained copies of all bank statements and cancelled checks drawn against the campaign account, original and/or copies of vendor invoices and receipts, as well as any other accounting records, contracts and/or documentation which would substantiate the amount and purpose of the candidate's campaign expenditures.

The scope of the audit covered the timeframe from April 8, 2004 through February 23, 2005, which coincides with the period that the Xavier L. Suarez campaign had two (2) campaign bank accounts¹ open and subsequently closed. Additionally, the COE audited 100% of all campaign expenditures as reflected on both the Campaign Treasurer's Reports and the campaign bank account statements from each banking institution maintained by the Suarez campaign.

SUMMARY OF CAMPAIGN ACCOUNT ACTIVITY

Based on review of the final Campaign Treasurer's Report (CTR), the Xavier L. Suarez campaign had a total of \$263,605 to run the candidate's election campaign. Of the total \$263,605 in campaign funds, \$125,000 (47%) was received in public funds and the remaining \$138,605 (53%) was acquired through private contributions.

¹ The Suarez campaign maintained and operated two (2) separate bank accounts (Bank of America and City National Bank) from September 13, 2004 through November 16, 2004. This is in direct violation of Florida Statute 106.021 (b) that states, "...each candidate ...shall also designate one primary campaign depository for the purpose of depositing all contributions received, and disbursing all expenditures made, by the candidate..."

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During the election, the campaign made expenditures totaling \$265,528.75, which exceeds the total contributions amount **reported on the final CTR** by \$1,923.75. **(See Exhibit A.)** The COE was unable to reconcile the \$1,923.75 variance in actual campaign expenses to the amount reported on the final CTR. Nevertheless, a breakdown of how the campaign funds were spent is shown in Table I. below:

Table I.

BREAKDOWN OF EXPENSES			
Expense Type	\$ Amount of Expense	% of Total Expenses	Allowable per §12-22 (g)?
Advertising Expenses	\$126,249.00	48%	Yes
Bank Fees	392.45	0%	Yes
Campaign Expenses	360.00	0%	Yes
Campaign Worker Wages	5,500.00	2%	Yes
Cash Withdrawals ¹	3,483.92	2%	No
Cellular Phone	393.05	0%	Yes
Courier Services	670.85	0%	Yes
CPA Services	429.29	0%	Yes
Fines ²	\$45.00	0%	No
Gas Expenses	93.62	0%	Yes
GOTV	500.00	0%	Yes
Grooming ³	145.07	0%	Yes
Meal Expenses	1,484.53	0%	Yes
Political Consultant Fees	2,500.00	1%	Yes
Postage	1,998.00	1%	Yes
Printing/Mailing Expenses	105,322.36	39%	Yes
Promotional Expenses	10,409.98	5%	Yes
Reimbursements	2,618.00	1%	Yes
Miscellaneous Expenses ⁴	2,933.63	1%	No
TOTAL	\$265,528.75	100%	

¹ Total cash withdrawals of \$3,483.92 consisted of \$1,332 in debit card cash withdrawals and \$2,151.92 in counter debits at Bank of America. The COE could not determine whether the cash withdrawn was used for legitimate campaign expenses as no supporting documentation was provided to justify the use of the cash withdrawn.

² The campaign paid for a parking fine using campaign funds, which the Florida Division of Elections has opined is not allowed to be paid for with campaign funds.

³ "Grooming" expenses consisted of dry cleaning (\$91.07) and day spa (\$54) expenses that totaled \$145.07 all together. The COE assumes that the candidate used private contributions to pay for these costs. No exceptions noted.

⁴ "Miscellaneous Expenses" were paid to various vendors. Because the candidate did not provide any receipts or invoices supporting these transactions, the COE cannot determine if these were legitimate campaign expenses.

CANDIDATE'S COMPLIANCE WITH COUNTY CODE § 12-22

1. Compliance with Campaign Expenditures Limit

Miami-Dade County Code §12-22 (e)(1) requires that County Commission candidates who request public financing from the Fund limit their campaign contributions and expenditures to \$150,000 during the primary election unless one candidate exceeds the established contribution limit. If there is a run-off election, Miami-Dade County Code §12-22 (e)(2) limits a County Commission candidate's campaign contributions and expenditures to \$100,000.

In the District 7 County Commission race, the opponent for Xavier Suarez, who is now the Honorable Carlos Gimenez, exceeded the \$150,000 raised contribution limit during the primary election. Commissioner Gimenez reported total contributions of \$158,282, during the July 23, 2004 reporting period. Therefore, since the raised contribution cap was exceeded as of this date, the expenditure limit was lifted for the District 7 County Commission race.

As such, the Xavier Suarez campaign was able to raise contributions in excess of the established limits set for both the primary and run-off elections (i.e. \$150,000 and \$100,000, respectively). Furthermore, in an August 26, 2004 email to the Miami-Dade Elections Department, Xavier Suarez stated that he was aware that his opponent had exceeded the contribution cap during the primary election. **(See Exhibit B for supporting documentation.)**

NO EXCEPTIONS WERE NOTED.

2. Compliance with County Code §12-22, Subsection (g) "Use of Funds"

To verify the candidate's compliance with Code §12-22 (g), "Use of Funds," the COE reviewed all campaign expenses and verified that the public funding portion of the campaign account was not used to pay for: clothing for the candidate or their immediate family member, except for a political advertisement as defined in Florida Statute §106.001(17); the purchase or rental of any vehicle for a candidate; the enhancement of any vehicle owned by a candidate or an immediate family member of the candidate; or personal grooming or cosmetic enhancements for a candidate.

Additionally, for payments made to individuals from the campaign account, the COE researched whether the payee was an immediate family member of the candidate. "Immediate family member" refers to the candidate's spouse, parents, children, and siblings. For payments made to business entities from the campaign account for the purchase of goods or services, the COE researched whether the business entity is owned or controlled by the candidate or an immediate family member of the candidate.

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For those campaign expenditures which were supported by sufficient and valid documentation, the COE auditor noted that the candidate complied with the requirements of County Code §12-22 (g), “Use of Funds.”

a. Insufficient Supporting Documentation for Campaign Expenses

Failure to provide supporting documentation for campaign expenses violates both Miami-Dade County Code §12-22, Subsection (f)(3)(a)(1) and Florida Statute §106.11(1)(b)(1)-(6). The COE auditor found that there was a total of \$30,933.35 (12% of total campaign expenses) in campaign expenditures that lacked any supporting documentation in the form of an invoice or receipt from the vendor that provided the goods and/or services. **(See Exhibit C for supporting documentation.)**

3. Compliance with County Code §12-22, Subsection (f)(6) “Disposal of Surplus Funds”

County Code §12-22 (f)(6) and Florida Statute §106.141 (4) require that the candidate dispose of any surplus funds remaining in the campaign account within 90 days after the election date in the following manner: (1) return all surplus funds to the County’s Election Campaign Financing Trust Fund; and, (2) any funds remaining in the campaign account that are in excess of the County’s public funding received should be disposed of per Florida Statute §106.141, Disposition of Surplus Funds. Given that the run-off election was held on November 2, 2004, the 90-day period for returning any surplus funds ended on January 31, 2005.

a. Candidate Simultaneously Maintained Two Campaign Bank Accounts

As noted previously, the Xavier Suarez campaign maintained and operated two (2) separate campaign bank accounts (Bank of America and City National Bank) from September 13, 2004 through November 16, 2004 in direct violation of Florida Statute 106.021 (1) (b). This statute states, in part, “...each candidate ...shall also designate **one primary campaign depository** for the purpose of depositing all contributions received, and disbursing all expenditures made, by the candidate...”

Furthermore, Florida Statute 106.021 (1) (b) also states that “the candidate ...may also designate one secondary depository in each county in which an election is held in which the candidate...participates. Secondary depositories shall be for the sole purpose of depositing contributions and forwarding the deposits to the primary campaign depository.”

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However, the Xavier Suarez campaign deposited campaign contributions and disbursed campaign expenditures from **BOTH** bank accounts during the period September 13, 2004 through November 16, 2004.

b. One Campaign Bank Account Not Closed Within 90 Days

The COE independently confirmed whether the campaign bank account was properly closed within the mandated timeframe by requesting written confirmation from the banking institution that the bank account was closed by January 31, 2005. The COE received a letter from City National Bank dated February 28, 2005 stating that the Xavier L. Suarez Campaign Account was closed on February 23, 2005, which is **more than three weeks after the 90-day deadline**. *(See Exhibit D for supporting documentation.)*

The COE also independently confirmed that the Bank of America account was closed on November 16, 2004, via written confirmation from the banking institution. *(See Exhibit E for supporting documentation.)*

c. Candidate Improperly Disposed of Campaign's Surplus Funds

The candidate, Xavier L. Suarez, received a total of \$125,000 from Miami-Dade County's Elections Trust Fund: \$75,000 during the primary election and \$50,000 for the run-off election. The COE notes that County Code §12-22 (f) (6) requires that if there are surplus funds remaining in the campaign account after the final election date (i.e. November 2, 2004), the candidate is to return any surplus funds that were received from the County's public financing fund to the County's Election Campaign Financing Trust Fund within 90 days of the election date.

Based on review of the Xavier Suarez campaign bank account held at Bank of America, the COE auditor noted that the bank account had a final balance of \$2,001.92 as of November 16, 2004. Furthermore, the candidate closed out the Bank of America campaign account on November 16, 2004 by making a counter withdrawal for the entire balance of \$2,001.92. There was no supporting documentation to show what this cash withdrawal was used to pay for in relation to liabilities of the Xavier Suarez campaign.

A review of the Campaign Treasurer Reports showed that on October 27, 2004 the candidate, Xavier L. Suarez, loaned his campaign \$1,000. Therefore, the candidate was entitled to pay himself back the \$1,000 that he loaned to his election campaign. However, the remaining balance of the surplus funds of \$1,001.92 should be paid back to the County's Election Campaign Financing Trust Fund in order to comply with County Code §12-22 (f) (6). *(See Exhibit F for supporting documentation.)*

COMPLIANCE WITH FL STATUTE CHAPTER 106, “CAMPAIGN FINANCING”

Election campaign finance laws are found in Florida Statute Chapter 106, Campaign Financing, and interpretations of these statutes are provided by the Florida Elections Commission as Elections Opinions. As part of this audit, the COE also reviewed the candidate's campaign account for compliance with Florida Statute Chapter 106.

Based on review of the candidate's campaign bank account records, vendor invoices, and other supporting documentation, the following are the COE's audit findings with regards to compliance with the Florida Statutes found in Chapter 106:

1. Use of Campaign Debit Card for Cash Withdrawals

For informational purposes, the COE notes that the State **does allow** local candidates to use a debit card to pay for campaign expenses only if the debit card is issued from the same banking institution where the candidate's campaign's bank account is maintained. ***[Florida State Division of Elections Advisory Opinion DE 00-03 “Use of Debit and Credit Cards for Campaign Contributions and Expenditures.”]***

However, Florida Statute 106.11 (2)(a)(6) **prohibits** debit cards to be used by the campaign **for cash withdrawals** and states the following:

“A debit card is **ALLOWED** as long as the person using the debit card **does not receive cash** as part of, or independent of, any transaction for goods or services.”

The COE notes that the Xavier Suarez campaign made sixteen (16) cash withdrawals using the campaign debit card that totaled \$1,332. This debit card was issued to the Xavier Suarez campaign from Bank of America, where the candidate maintained a campaign depository. As noted above, cash withdrawals using the campaign debit card are prohibited by Florida Statute 106.11 (2)(a)(6). Moreover, the candidate did not provide any supporting documentation for the cash withdrawals. Thus, the COE cannot determine if the cash was used for legitimate campaign expenses. ***(See Exhibit G for supporting documentation.)***

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2. Other Cash Withdrawals without Justification

Based on review of the Bank of America bank statements, the COE auditor noted that there were two other cash withdrawals for which there was no supporting documentation in the form of receipts to verify the purpose of the cash withdrawn. Moreover, one of the cash withdrawals was made by the candidate to close out the bank account after the November 2, 2004 run-off election. The two cash withdrawals noted were as follows:

1) October 15, 2004	\$150.00	Cash Withdrawal - FL TLR
2) November 16, 2004	<u>\$2,001.92</u>	Counter withdrawal – X. Suarez
TOTAL	\$2,151.92	

3. Expenditures in Furtherance of the Campaign Through Third Parties

Florida Statutes §106.021(3) and §106.11(1) prohibit direct or indirect campaign expenditures in furtherance of a candidate's election campaign except through the duly appointed campaign treasurer. When a candidate makes payments to an individual or entity which then uses those campaign funds received to transact on behalf of the candidate with third parties those individuals and entities are viewed as "intermediaries" under the Florida statutes. An intermediary spending campaign funds on behalf of the candidate prevents full public disclosure as to how campaign funds are actually spent by a candidate.

Additionally, Florida Statute §106.011 (1) prohibits the expenditures of campaign funds on behalf of a candidate from any bank account other than the candidate's primary campaign account. Therefore, any campaign expenditure made by an intermediary on behalf of the candidate from the intermediary's personal and/or business bank account is in violation of Statute §106.011 (1).

The following individuals received campaign funds from the Xavier L. Suarez campaign for the purpose of paying poll worker salaries, campaign mobilization efforts, and the "Get-Out-The-Vote (GOTV)" initiative:

- a) Darlene Jackson was issued two (2) checks from the Xavier L. Suarez campaign totaling \$2,000 for poll worker salaries and the campaign's mobilization efforts. Because there were no receipts or invoices submitted for these payments, the COE could not definitively verify the validity of these expenses. ***(See Exhibit H for supporting documentation.)***

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- b) Vicente Lago was issued two (2) checks from the Xavier L. Suarez campaign totaling \$1,500 for the campaign's mobilization efforts and the GOTV initiative. Because there were no receipts or invoices submitted by the payee, the COE could not definitively verify the validity of these campaign payments. **(See Exhibit I for supporting documentation.)**
- c) Leon Leonard was issued two (2) checks from the Xavier L. Suarez campaign totaling \$1,200 for the campaign's mobilization efforts and poll worker salaries. Because there were no receipts or invoices submitted by the payee, the COE could not definitively verify the validity of these campaign payments. **(See Exhibit J for supporting documentation.)**
- d) David Walker was issued one (1) check from the Xavier L. Suarez campaign totaling \$1,000 for the campaign's mobilization efforts. Because there were no receipts or invoices submitted by the payee, the COE could not definitively verify the validity of this campaign payment. **(See Exhibit K for supporting documentation.)**

4. Campaign Payments to Media Consultants for the Purchase of Media

The Florida Elections Commission decision DE 86-14 states the following:

“A candidate who is procuring both media related consultant services and mass media political advertisements **must issue separate checks drawn on the campaign account to media consultant for their services and to each media outlet that is providing advertising services.**”

Additionally, the Florida Elections Commission stated in its decision DE 03-08 that Florida Statute §106.021(3) does **not** allow expenditures to be made either directly or indirectly in furtherance of the candidacy of any person. DE 03-08 further stated that if a media consulting firm was to pay for a candidate's actual advertisements it would be considered a direct expenditure in furtherance of the candidate and as such it is prohibited because the expense incurred was not paid directly from the candidate's campaign account and thereby would interfere with full public disclosure of how the campaign dollars were spent.

Based on a review of cancelled checks and supporting documentation, the COE found that the Xavier L. Suarez campaign issued eight (8) checks totaling \$76,963.00 to media consultants for the purchase of radio advertising and media consulting fees. **(See Table II below.)** Five (5) checks totaling \$52,488.00 were paid to “The A Group,” and three (3) checks totaling \$24,475.00 were paid to “E & N Group.” **(See Exhibits L & M for supporting documentation.)**

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This is in direct violation of Florida Statute §106.021 (3) and the Florida Election Commission decisions DE 03-08 and DE 86-14.

TABLE II.

<u>Date</u>	<u>Vendor Name</u>	<u>Check No.</u>	<u>Amount</u>
08/06/04	The A Group	1003	\$10,025.00
08/16/04	The A Group	1010 ¹	\$2,585.00
08/16/04	The A Group	1015	\$20,078.00
09/17/04	The A Group	1059	\$10,000.00
09/30/04	The A Group	1073	\$9,800.00
10/28/04	E & N Group	1010 ²	\$20,200.00
10/28/04	E & N Group	1011	\$2,775.00
11/01/04	E & N Group	1013	<u>\$1,500.00</u>
		TOTAL:	\$76,963.00

AUDIT CONCLUSION

Overall, the COE found the campaign to be in substantial compliance with the requirements of Miami-Dade County Code §12-22 (G), "Use of Funds," as no disallowed expenses were paid with public funds. However, the candidate did not comply with Miami-Dade County Code §12-22 (f) (6), "Disposal of Surplus Funds," as approximately \$1,000 of the campaign account's surplus funds should have been paid back to the County's Election Campaign Financing Trust Fund.

Additionally, the COE found several of instances of noncompliance with Florida Statute Title IX, Chapter 106, "Campaign Financing." The more significant areas of concern include maintaining two (2) campaign bank accounts simultaneously; failure to close one of the bank accounts 90 days after the date of the election; use of the campaign debit card for cash withdrawals; expenditures in furtherance of the campaign through third parties; payments made to media consultants for the purchase of media; and insufficient supporting documentation for approximately 12% of the campaign expenditures.

The COE appreciates the cooperation extended by those individuals involved with the Xavier L. Suarez campaign throughout the course of this audit.

¹ Check No. 1010 to the "A Group" was drawn from the Bank of America campaign account.

² Check No. 1010 to the "E&N Group" was drawn from the City National Bank campaign account.

EXHIBITS

- A. Campaign Treasurer's Termination Report Summary**
- B. X. Suarez email to M. Acosta – Elections Department**
- C. List of Expenditures without Supporting Documentation**
- D. City National Bank Letter**
- E. Bank of America Letter**
- F. Bank of America Debit Memo – Closing Transaction**
- G. List of Cash Withdrawals Using Campaign Debit Card**
- H. Copies of Checks paid to Darlene Jackson for campaign mobilization & poll worker salaries**
- I. Copies of Checks paid to Vicente Lago for campaign mobilization & GOTV**
- J. Copies of Checks paid to Leon Leonard for campaign mobilization & poll worker salaries**
- K. Copy of Check paid to David Walker for campaign mobilization**
- L. Copies of Checks paid to “The A Group” for 3rd Party Media Buys**
- M. Copies of Checks paid to “E & N Group” for 3rd Party Media Buys**

APPENDIX

- 1. Campaign's Response to the Draft Audit Report**